

Message Text

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C O N F I D E N T I A L SAN JOSE 1147

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E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: LEGAL VIEW OF EXTRADITION BILL'S POINTS

REF: STATE 055653

1. FRANCISCO CASTILLO, THE EMBASSY'S LEGAL COUNSEL, COMMENTED AS FOLLOWS ON THE POINTS RAISED BY THE DEPARTMENT REGARDING THE PRO-VESCO EXTRADITION BILL: THE LANGUAGE IN ARTICLE 1, "HASTA DONDE SEA POSIBLE," (OR "INsofar AS IS POSSIBLE") IS LANGUAGE WHICH, ACCORDING TO CASTILLO, WILL HAVE TO BE SUBJECT TO JUDICIAL INTERPRETATION THAT WILL NOT COME UNTIL THE TREATY IS INVOKED IN THE COURTS. THE INTERPRETATION WILL THEN ESSENTIALLY DECIDE WHETHER THE EXTRADITION TREATY OR THE LAW IS GUIDING. IN CASTILLO'S VIEW THERE IS NO QUESTION CONSTITUTIONALLY THAT THE TREATY IS SUPERIOR TO ANY LAW IN PRINCIPLE, BUT JUDICIAL INTERPRETATION MIGHT WELL BRING IN THE LAW TO EXPLAIN OR COMPLEMENT THE TREATY IN SUPPOSEDLY "PROCEDURAL" MATTERS.

WITH REGARD TO ARTICLE 9(6), CASTILLO BELIEVES THE SAME PRINCIPLE APPLIES AS IN ARTICLE 1; THAT IS, THE COURT WILL HAVE TO MAKE THE CONSTITUTIONAL DETERMINATION WHETHER TREATY OR LAW WILL APPLY.

2. WITH REGARD TO ARTICLE 2(11), CASTILLO OBSERVED THAT THIS IS NOT A SIGNIFICANT PORTION OF THE BILL BECAUSE COSTA RICAN LAW ALLOWS A MAXIMUM PENAL SENTENCE OF 25 YEARS, SUPERIOR TO ANY PENALTY THAT MIGHT BE ADJUDGED IN THE U.S. AGAINST VESCO FOR THE CRIMES ON WHICH THE PREVIOUS EXTRADITION ATTEMPT WAS BASED. HOWEVER,
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CASTILLO POINTS OUT, THE ARTICLE DOES INDEED MEAN THAT

IN OTHER CASES WHERE THERE IS A POSSIBILITY OF A GREATER SENTENCE IN THE U.S., INCLUDING THE DEATH SENTENCE, EXTRADITION WOULD NOT BE GRANTED AND THE CASE WOULD BE TRIED UNDER COSTA RICAN LAW. CASTILLO SEES MORE SPECIFIC DIFFICULTY AND INTENT TO PROTECT VESCO IN ARTICLE 2(7), WHICH IN ESSENCE PROHIBITS THE EXTRADITION OF ANY PERSON WHO HAS COMMITTED A CRIME, THE PUNISHMENT FOR WHICH CONTEMPLATES THE POSSIBILITY ONLY OF A FINE.

3. CASTILLO WENT ON TO DISCUSS THE UNCONSTITUTIONALITY OF THE BILL AS HE AND HIS COLLEAGUES SEE IT. HE OBSERVED THAT THE BILL'S LANGUAGE RUNS COUNTER TO ARTICLE 167 OF THE COSTA RICAN CONSTITUTION, WHICH PROHIBITS THE PASSAGE OF ANY LAW THAT CONCERNS THE ORGANIZATION OR FUNCTION OF THE JUDICIAL BRANCH WITHOUT THE PRIOR CONSULTATION OF THE SUPREME COURT. ARTICLE 6 OF THE BILL REMOVES EXTRADITION MATTERS FROM THE JUDICIAL BRANCH AND PLACES THEM IN THE EXECUTIVE BRANCH WHEN THE REQUESTING STATE'S POLICY IS TO DECIDE EXTRADITION QUESTIONS IN ITS EXECUTIVE BRANCH. CASTILLO ARGUES THE LAW IS UNCONSTITUTIONAL BECAUSE THE BILL WAS NEVER SCRUTINIZED BY THE SUPREME COURT, BUT THIS POINT COULD ONLY BE TESTED, IN ACTUAL TEST CASE WHERE THE LAW IS INVOKED.

4. CASTILLO ALSO OBSERVED THAT WHILE THE GOVERNMENT'S PRETEXT IN DRAFTING THIS BILL WAS OSTENSIBLY TO CONFORM COSTA RICAN EXTRADITION LAW TO THE AMERICAN CIVIL RIGHTS CONVENTION, SIGNED IN COSTA RICA IN 1969, THERE IS NO DOUBT IN HIS MIND THAT THE SPECIFIC INTENT OF THE LAW IS TO PROTECT ROBERT VESCO FROM FURTHER EXTRADITION. PROCEEDINGS.
LANE

NOTE BY OC/T: EXDIS CAPTION ADDED PER S/S-O, MR. SARROS.

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